

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

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WRIT APPEAL No.907 of 2006

Between:

Kum. Vijayalaxmi Devi

... Appellant

AND

The Director, Tribal Welfare,
Damodaram Sanjeevaiah Sankshema Bhavan,
Masab Tank, Hyderabad & another.

... Respondents

Counsel for the appellant : Shri M. Vidyasagar

Counsel for respondent No.1: Government Pleader for Social
Welfare

Counsel for respondent No.2: Shri Sudesh Anand

Dated: 28th September, 2006

: JUDGMENT :

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PER HONBLE SRI C.V.NAGARJUNA REDDY,J

This writ appeal arises out of an order of the learned Single Judge dismissing the writ petition filed by the appellant questioning the proceedings of the 1st respondent in Rc.No.2073/2006/TRI/VC-4 dated 31.07.2006.

The appellant appeared for EAMCET-2006 held for admission into Engineering course and secured rank No.74116. She appeared for counseling held on 29.07.2006. As the appellant claimed her social status as “Konda Dora” a Scheduled Tribe, the Convener, A.P. State Council for Higher Education, Hyderabad – 2nd respondent herein directed her to get clearance from the 1st respondent. The appellant appeared before the 1st respondent and produced the caste certificate dated 04.06.1993 issued by the Mandal Revenue Officer, Saluru, certifying that she belongs to “Konda Dora” community. As the 1st respondent entertained doubt about the genuineness of the said certificate, through his Memo dated 31.07.2006, he directed the appellant to appear before him on 10.08.2006 along with her parents with oral and documentary evidence to substantiate her claim for Scheduled Tribe status. In the said memo, the 1st respondent directed that a seat might be kept in abeyance by the University of Health Sciences until further orders. Aggrieved by the said memo, the appellant filed W.P.No.16828 of 2006, which as mentioned above, has been dismissed by the learned Single Judge.

The learned Single Judge having considered the relevant provisions of Andhra Pradesh (Scheduled Caste, Scheduled Tribe, Backward Classes) Regulation of Issue of Community Certificate Act, 1993 (for short “the Act”) and the Rules made in G.O.Ms.No.58 Social

Welfare (J), dated 12.05.1997 (for short “the Rules”) upheld the competence of the 1st respondent to issue the impugned memo and also to make an enquiry into the social status of any person before the matter is referred to the District Collector after it is found by the 1st respondent that the certificate is obtained fraudulently.

Sri M. Vidya Sagar, learned counsel for the appellant, contended that even if the 1st respondent is competent under sub-rule 10 of Rule 9 of the Rules to hold an enquiry before the matter is referred to the District Collector, as held by the learned Single Judge, the 1st respondent has no power to give any directions, which has the result of keeping the appellant’s admission in abeyance. The learned counsel also contended that until the Collector finally decides on the genuineness or otherwise of the social status certificate, the appellant cannot be prevented from being admitted into and prosecuting her engineering course.

We are not inclined to accept this submission. Sub-rule 10 of Rule 9 reads as under:

“In respect of Tribals, the Commissioner of Tribal Welfare, either suo motu or on a written complaint by any person or on request made by an employer/educational institution/appointing authority, shall enquire into the correctness of any community nativity and date of birth certificate already issued and if it is found that the said certificate is obtained fraudulently, shall refer the case to concerned Collector to the Government for its cancellation as per the procedure laid down under Section 5 of the Act”.

Under this sub-rule the 1st respondent is vested with power to enquire into the correctness of any community, nativity and date of birth certificate either *suo motu* or on a written complaint by any person and if he finds on enquiry that the said certificate is obtained fraudulently, he

shall refer the case to the concerned Collector for its cancellation.

In the instant case, the 1st respondent, *prima facie*, examined the claim of the appellant and for the reasons recorded in his memo impugned in the writ petition, he found the said certificate to be doubtful. However, to give a further opportunity to the appellant and to enable her to have the help of her parents, who are suppose to have full knowledge of the appellant's community, he directed the appellant to appear again before him on 10.08.2006.

From the long title of the Act it is evident that one of the purposes of the Act is to curb effectively the evil practice of producing false community certificates. Keeping in view this object, it cannot be said that the 1st respondent, who, *prima facie*, found the social status certificate produced by the appellant being bogus, is denuded of his power to give a direction in the nature of which he has given in the instant case viz., to keep a seat in abeyance. Though there is no express power in the 1st respondent to give such directions, in our view, such power is concomitant to the powers vested in him under sub-rule 10 of Rule 9 of the Rules. Any other interpretation of the said Rule renders the very object of the Act otiose. If the power to give necessary directions is not read into sub-rule 10 of Rule 9, there will be instances, where before enquiry is completed, the candidates with bogus certificates get admissions, may some times even complete the courses, denying the seats to the candidates who truly belong to the Scheduled Caste/Scheduled Tribe/Backward communities.

On the above analysis of the Rule, we decline to interfere with the order passed by the learned Single Judge, dismissing the writ petition. However in the circumstances of the case, we deem it expedient to give the following directions:

Within seven days counting from 09.10.2006, Commissioner, Tribal Welfare shall take appropriate decision in terms of rule 9(10) of Andhra Pradesh Scheduled Caste, Scheduled Tribe and Backward Classes – Issue of Community, Nativity and Date of Birth Certificates Rules, 1997. If he comes to the *prima facie* opinion that certificate of the petitioner is not genuine, then he shall refer the matter for enquiry to District Collector concerned, who shall on or before 26.10.2006 take final decision in the matter. If the Commissioner accepts the certificate produced by the petitioner, then he shall immediately order for regularization of the allotment of seat made in her favour. The appellant is directed to appear before the Commissioner on 11.10.2006.

C.V.NAGARJUNA REDDY, J.

28th September, 2006.

G.S.SINGHVI, C.J.

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